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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Connecticut Department of Public Utility Control)	RM No. 9258
Petition for Rulemaking to Amend the Commission's)	
Rule Prohibiting Technology-Specific or)	
Service-Specific Area Code Overlays)	
)	
Massachusetts Department of Telecommunications)	NSD File No. L-99-17
and Energy Petition for Waiver to Implement a)	
Technology-Specific Overlay in the)	
508, 617, 781, and 978 Area Codes)	
)	
California Public Utilities Commission and the People)	NSD File No. L-99-36
of the State of California Petition for Waiver to)	
Implement a Technology-Specific or Service-Specific)	
Area Code)	

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA) submits its comments in response to the Federal Communications Commission's *Notice of Proposed Rulemaking* in the above captioned matter.¹

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone

¹ In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999). ("NPRM")

companies” as defined in the Telecommunications Act of 1996. NTCA’s members are concerned about the FCC’s proposed action in this proceeding and the associated costs.

NTCA recognizes that number exhaust is a serious and looming problem. However, NTCA urges the Commission to seek and adopt the most cost-effective approach. NTCA supports the FCC’s conservation efforts, but opposes rules that will cause small and rural carriers to incur substantial costs for a temporary solution that promises little or no benefit for their customers.

As a threshold matter it is important to recognize that number exhaust is not a problem generally faced or caused by rural incumbent local exchange carriers. Carriers in rural areas are still using the NXXs that were assigned thirty, forty and fifty years ago. Neither growth, nor the proliferation of carriers, the root causes of exhaust, are prevalent in rural areas. In addition, rural carriers are faced with the uncertainties surrounding USF and access reform. They are also coping with the demands for updated systems to provide advanced services. Increased costs seriously jeopardize the carriers’ efforts. Rural carriers are faced with significantly higher operational costs than urban carriers and smaller subscriber bases over which to spread the costs. It is desirable to avoid the creation of any regulation which results in increased cost for the rural carriers.

The FCC should avoid the imposition of high cost temporary solutions to the numbering problem that do not address its root cause, the technical limitations of the current dialing plan. It is reasonable to anticipate the emergence of many more CLECs and a continuation of the rapid growth of the wireless industry. The capability of the current NANP will be exceeded. Rather

than forcing carriers to pay for temporary solutions now and pay again to implement a permanent solution, the FCC should require the immediate implementation of low-cost mandatory number conservation measures and begin a proceeding to revise the NANP to provide for additional numbers. This would be a permanent solution for the industry's insatiable hunger for more numbers. The sooner the FCC adopts a permanent solution, the sooner manufacturers can incorporate the capabilities into their products and the sooner carriers can purchase compliant equipment. If all switching equipment purchased after a certain date was capable of handling both the current NANP and a new NANP, there is a better chance that most of the network would be positioned to implement the new NANP at little incremental cost when it is deemed necessary.

Some conservation measures are appropriate immediately. For example, measures that require a carrier to verify its need for numbers and demonstrate its state of readiness to operate are relatively low-cost and would slow down the rate at which numbers are being consumed.² NTCA agrees that carriers serving high utilization areas should be required to report utilization data. Currently, data on numbering use is collected according to industry guidelines, but there is no regulatory obligation to provide such data. Mandatory reports will allow the NANPA to ensure that carriers in urban areas are using their numbers appropriately. However, the reporting requirement should not be imposed on small carriers in areas where exhaust is not a problem. Rural customers should not be burdened with costs that contribute no competitive benefits to rural areas. Small, rural carriers have very limited resources and few employees. Every new

² NPRM, ¶ 56-57

obligation imposes new costs that are ultimately borne by rural customers. Rural carriers are not the source of the numbering shortage; their customers should not be forced to incur the costs associated with the additional resources necessary to comply with yet another layer of regulations.

NTCA agrees that the FCC should define clearer enforcement mechanisms and penalties for the Central Office Code Guidelines. The guidelines have been in place for some time, but they have never been enforced. Enforcement alone may free up enough numbers to buy the Commission enough time to adopt a permanent numbering solution. The guidelines would cost the carriers, and thus their consumers, very little. These measures should be pursued aggressively and vigorously.

As the FCC implements these immediate, low-cost approaches to numbering exhaust, it should actively pursue a permanent solution to the problem. Other expensive and burdensome solutions are not the answer. Mandatory ten-digit dialing may be feasible and necessary in urban areas, but it should not be mandated nationally. Many, if not most, rural areas are not even facing competition yet. There is no reason to require rural local exchange customers to dial ten digits when their carriers are not in danger of running out of numbers.

The number pooling solutions are not feasible for most rural carriers. All three proposed types of number pooling require a carrier to be local number portability (LNP) capable. Unless it is located in one of the 100 largest MSAs, a rural local exchange carrier is not required to be LNP capable until six months after it receives a request for it from a competitor.³ The equipment

³ 47 C.F.R. §52.23(c).

necessary for thousands-block pooling would cost rural carriers hundreds of thousands of dollars.

Rural customers would receive virtually no benefit from the pooling and should not have to pay for it. Mandatory pooling should never be required of carriers lacking the LNP capability unless there is an effective mechanism for recovery of the cost of implementation from the competing carriers that benefit from pooling.

As the FCC seeks to adopt a cost recovery mechanism, NTCA urges the FCC to consider all of the costs to be incurred and to adopt a mechanism that provides recovery for all carriers that incur cost. If the FCC adopts a rule that requires all carriers to contribute to the administration of pooling, it must recognize that all carriers will incur costs, even those that are not capable of pooling. The FCC should be wary of adopting cost recovery rules, as it did with number portability, that only permit recovery for carriers with the equipment. It is burdensome and time-consuming to require small carriers to request waivers of rules that did not adequately consider the small and rural incumbent LECs.

COMMENTS ON THE IRFA

In its NPRM, the FCC seeks comment in response to the Initial Regulatory Flexibility Analysis (IRFA) about the possible significant economic impact on small entities of the policies and rules in its notice.

As an initial matter, the FCC's continued allegation that small incumbent LECs cannot qualify as small businesses is incorrect and contrary to law. The commission has justified its conclusion that an incumbent LEC cannot be a small entity because it is dominant in its field of

operation.⁴ A lack of dominance in its field of operation is one of the Small Business Act's criteria for defining a small business concern.⁵ However, the Small Business Administration's (SBA's) implementing regulations for the Small Business Act indicate that dominance in a "field of operation" is determined on a national basis. Small and rural incumbent LECs are clearly not dominant in the provision of local exchange or any service on a national basis.

Furthermore, the SBA is the exclusive arbiter of small business size standards, as authorized by Congress.⁶ The SBA defines small incumbent LECs under Standard Industrial Classification Code 4813, Telephone Communications, Except Radiotelephone, as entities with 1500 or fewer employees.⁷ The FCC is incorrect in its belief that incumbent LECs with less than 1500 employees should not be considered small entities within the meaning of the RFA. The SBA recently addressed the issue in a letter to Chairman Kennard,⁸ Clearly small incumbent LECs are small businesses under the Small Business Act and the RFA.

As described more fully *supra*, there are several actions the FCC should take to significantly reduce the burden of its proposed rule on small incumbent LECs. Small incumbent LECs in rural areas are not causing the number exhaust problem and will not directly benefit

⁴ NPRM, ¶ 268.

⁵ 15 U.S.C. § 632

⁶ See *Northwest Mining Assoc. v. Babbitt*, 5 F. Supp. 2d 9, 15 (D.D.C. 1998)(citations omitted) ("The RFA requires agencies to use the Small Business Administration's definition of a small entity.")

⁷ 13 C.F.R. §121.201.

⁸ See Letter from Jere W. Glover, Chief Counsel, and Eric E. Menge, Asst. Chief Counsel, SBA Office of Advocacy, to FCC Chairman William Kennard, 5/27/99.

from its cure. Number utilization reports will help the FCC to track numbering use in urban areas, but there is no benefit to forcing small incumbent LECs to also prepare such a report. There is a significant cost that will be associated with the preparation of such a report, a cost that would be disproportionately born by the small carrier, but have no countervailing benefit.

Also, number pooling solutions are not technically feasible in most rural areas. Rural incumbent LECs are not required to be local number portability capable, a technical prerequisite to number pooling, unless they receive a bona fide request for it. Requiring rural carriers to participate in number pooling at this time is premature.

No matter what number conversation proposals the FCC eventually adopts, it is important that it also create sufficient and adequate cost recovery mechanisms. It is especially burdensome to small and rural LECs to not have adequate means to recover their costs when complying with costly new regulations. The FCC must consider the small and rural incumbent LECs needs before it adopts the rules, and not require the companies to come to it with waiver requests after the fact.

In considering any numbering exhaust remedies, the FCC should carefully consider the disproportionate impact associated costs have on small rural incumbent LECs. Small carriers and their subscribers are least able to afford costly new regulation and, in this instance, benefit the least from it.

CONCLUSION

NTCA recognizes that numbering exhaust is a looming problem, especially in urban areas, with multiple service providers. It is appropriate for the FCC to address the problem, but it should do so in the most cost-effective manner possible. NTCA urges the Commission to consider low cost measures for the short-haul and begin considering a permanent solution. Such an approach would spare carriers, and thus their customers, from paying twice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 99-200, FCC 99-122 was served on this 30th day of July 1999 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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